IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FOURTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO.7336 of 2004

Between:

T.Lakshminarasimha Rao, S/o.Late T.Lakshmana Rao,
R/o.Gujarathipeta, Srikakulam, Srikakulam Dist.

...PETITIONER

AND

1. The State Transport Appellate Tribunal, A.P., Hyderabad rep.by its Presiding Officer, Manoranjan Complex, Near Ajantha Gate, Mojamjahi Road, Hyderabad.

2. The State Transport Authority, A.P., Hyderabad, Sri Burgula Ramakrishna Rao Office Buildings, Tank Bund Road, Hyderabad, rep.by its Secretary.

3. Smt.M.Annapurnamma, W/o.late M.V.Rama Doss, Hindu, 73 years, r/o.25-12-3, L.A.Gardens, Vizianagaram, Vizianagaram District.

4. The A.P.S.R.T.C., rep.by its Managing Director, Musheerabad, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction, particularly one in the nature of writ of certiorari by calling for the records from the file of the 1st respondent in M.P.No.40/2004 in R.P.No.449/2003 and quash its order dt. 1-4-2004 made therein, with a direction to the 1st respondent herein to implead the petitioner herein as 3rd respondent in the R.P.No.449/2003 filed by the 3rd respondent herein.

Counsel for the Petitioner: MR.T.VENKATA RAMANA

Counsel for the Respondent Nos.1 and 2: GP FOR TRANSPORT

Counsel for the Respondent No.3: Smt.PADMA

Counsel for the Respondent No.4: K.SRINIVASA RAO

The Court made the following:

THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.7336 of 2004

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ORDER:

Heard Sri T.Venkataramana, learned counsel for the petitioner, learned Government Pleader for Transport for respondent Nos.1 and 2, Ms.Padma, learned counsel for the third respondent and Sri K.Srinivasa Rao, learned counsel for the fourth respondent.

The Writ Petition is directed against the order dated 01.04.2004 of the first respondent-Tribunal rejecting the application of the petitioner in M.P.No.40 of 2004 seeking to implead himself as a third respondent in R.P.No.449 of 2003 instituted by the third respondent herein. The third respondent filed R.P.No.449 of 2003 before the first respondent aggrieved by the order of the second respondent rejecting her application for restoration of the permit granted in favour of her husband which lapsed in the year 1975 or in the alternative, grant of a fresh pucca permit. The second respondent rejected the third respondent's application as stated above on 06.09.2003. Aggrieved thereby, she filed the R.P. in substance seeking restoration of the permit or grant of a new permit.

By the order impugned herein, the first respondent-Tribunal rejected the application of the petitioner seeking impleadment as a third respondent in the R.P. on the grounds as under, in brief:

a. That as distinct from the provisions of the earlier Motor Vehicles Act, 1939, in the Motor Vehicles Act, 1988 there is a paradigm shift in the phraseology of the statutory provisions whereby applications for a fresh pucca permit need not be preceded by the hearing of an existing operator on the route except where the State Transport undertaking is entitled to be heard in view of a potential injury to its approved Schemes;

b. There being no restriction on the number of permits that could be granted on a route (except in permits qua an approved Scheme), no existing

operator could *ipso facto* be considered a person aggrieved even at the stage an application for a pucca permit is considered by the competent authority under the provisions of the Act;

c. In the light of the decision in ***Mithilesh Garg v. Union of India*** wherein it was held that there are no limits to the number of permits that could be granted, any grievance of an existing operator could be assuaged by such an operator making a representation to the competent authorities who may consider such representation so however that an existing operator does not have a right of audience in respect of consideration of an application for a fresh pucca permit.

The singular ground on which the petitioner claims an insular right to be heard in R.P.No.449 of 2003 is that he was a party respondent to an earlier Writ Petition No.752 of 1998, as also in Writ Appeal No.1005 of 2000, filed by the third respondent herein, as also in the proceedings before the Secretary of the second respondent and was heard prior to the passing of the order dated 19.07.1995, by the Secretary of the second respondent.

The question is whether the petitioner is entitled to be a respondent in R.P.No.449 of 2003 on account of the said factual circumstances requires consideration of the chequered and meandering litigative history of the incessant attempts of the third respondent to obtain a restoration of the permit granted to her deceased husband or a fresh permit in her own name. The third respondent herein submitted an application on 10.10.1994 for restoration of the permit held by her late husband (during 1975) on the route from Vizianagaram to Ichapuram or in the

alternative for a grant of pucca stage carriage permit on the said route. The petitioner, an existing pucca stage operator in the inter-state route between Srikakulam to Berhempur, filed his objections to the third respondent's application aforesaid. The Secretary of the second respondent considered the application including the objections of the petitioner and by proceedings dated 19.07.1995 rejected the application of the third respondent. Aggrieved, the third respondent preferred an appeal A.P.No.172 of 1995 before the first respondent. In the appeal, the petitioner was not impleaded as a party respondent. By the order dated 16.12.1997, the third respondent's appeal in A.P.No.172 of 1995 was rejected by the first respondent. Aggrieved, the third respondent filed Writ Petition No.752 of 1998. In the said Writ Petition, the petitioner applied for impleadment as a party respondent and was impleaded. The Writ Petition was, however, dismissed and aggrieved thereat, the third respondent preferred Writ Appeal No.1005 of 2000. The Writ Appeal was allowed on the singular ground that the Secretary of the second respondent was incompetent to have considered an application for grant of pucca permit as it was the second respondent and not its Secretary, which was competent to consider such an application. Thereafter, pursuant to the orders in Writ Appeal No.1005 of 2000, the second respondent considered the application of the third respondent and rejected her application by the order dated 06.09.2003 where against R.P.No.449 of 2003 was preferred by the third respondent.

On the basis of the aforesaid chronology of facts, the petitioner urges a right of being heard as an appropriate party in an application of the third respondent, for restoration of the permit earlier granted in favour of her husband or the grant of a

fresh pucca permit in her favour. This expectation is fueled not in a mean measure by having been afforded an audience by the Secretary of the second respondent at an earlier point of time and an account of having been a party respondent in W.P.No.752 of 1998 and therefore also in W.A.No.1005 of 2000.

In the considered view of this Court, the mere fact that the petitioner was heard by the Secretary of the second respondent in an earlier abortive and incompetent proceedings or that he was permitted to be impleaded as a party respondent in W.P.No.752 of 1998 or in W.A.No.1005 of 2000 does not *ipso facto* enable the petitioner to participate in the proceedings either before the second respondent or in a revision before the first respondent. The application of the third respondent which was considered by the second respondent pursuant to the orders of this court in W.A.No.1005 of 2000, is an application in substance for grant of a pucca permit either as a restoration or as grant of a fresh pucca permit. The provisions of the Motor Vehicles Act, 1988 under which legislative dispensation the second respondent is required to consider applications for grant of pucca permits, does not either expressly or by any necessary implication impose any restriction on the number of permits that could be granted on a route but leaves it to the statutory discretion of the competent authority. In the plenitude of such discretions the authority is entitled to determine the application for grant of a permit on all rational parameters including the number of existing permits on a sector, the interests, volume and density of the traffic, the conditions of the route and all other relevant parameters. Insofar as a public transport undertaking is concerned, it has a right to be heard in any such application as there could be a potential conflict of interest

between an applicant and any approved Scheme that such public transport undertaking might have on the whole or part of such newly applied for route and by any conditions imposed in the approved Scheme which either permit or prohibit wholly or partly the entry of a new operator or an existing holder. No other member of the public or an existing private holder for that matter, has a right to be heard in any such proceeding before the second respondent when another individual applies for grant of a permit. Since as an existing operator there might a potential impact if a permit is granted to another operator, an existing operator may be at liberty to make a representation which could be considered by the second respondent as an information to fertilize its discretion for the grant of a permit and as part of, the multitude of relevant material that the second respondent is required to consider in the exercise of its discretion under the provisions of the Act. This liberty of making a representation available to an existing operator is not however capable of evolution into a right to participate in the proceedings or in appellate or revisional proceedings under the provisions of the Act. Unless there is a clear and proximal impact on any identifiable and exclusive right of an existing operator in respect of the route for which he already has a permit, neither facially nor by implication does an existing private operator have any such exclusive or monopolistic right of applying for a route to the exclusion of other entrants into the field. There is another reason why in the considered view of this Court the claim for participation of an existing operator in the proceedings for the grant of a fresh permit should be disallowed. The legislative purposes underlying the various provisions of the Motor Vehicles Act, 1988 appear to be to facilitate the regulatory authorities to expeditiously consider the application

for grant of a pucca permit, so as to sub-serve the public interest need of providing efficient and adequate transport services to the poor millions of citizens in need of such transport services. The cutting edge of efficiency in the matter of considering applications for grant of permits would be smothered by interminable procedural wrangles, if all existing operators are treated as having a right to participate in any proceedings of an individual application for grant of a pucca permit. All existing private operators could tie up the proceedings before the second respondent in procedural knots and thereafter in any appeals or revisions, rendering the object of providing adequate services on a route, interminably delayed.

Sri T.Venkataramana, learned counsel for the petitioner has contended that in view of the ratio deducible from the decision of the Supreme Court in ***Abdul Hai Khan v. Subal Chandra Ghose***, the petitioner is entitled to be impleaded as a respondent in R.P.No.449 of 2003 pending consideration before the first respondent. The issue presented in this Writ Petition did not directly arise in ***Abdul Hai Khan v. Subal Chandra Ghose*** case (supra). In ***Abdul Hai Khan v. Subal Chandra Ghose*** (supra) case, the facts are as under:

The State of West Bengal by a 1963 Public Scheme nationalized certain routes in Calcutta and Howrah under the earlier enactment, the Motor Vehicles Act, 1939. In the said Scheme, a provision was made permitting existing private operators to continue their operations on the notified routes. The previous notification was modified on successive occasions in 1963, 1964, 1970 and 1980. The existing operators were thus entitled to apply even on routes notified by

Schemes. Existing operators filed Writ Petitions aggrieved by the orders of the Regional Transport Authority, Calcutta, granting permits to individual private operators on routes overlapping the nationalized routes on which they were also operating. They contended that in sub-version of the notified Schemes and of their interests as existing operators saved under the modified Schemes, the Regional Transport Authority had granted the permits to new operators. The existing operators failed in the Writ Petitions filed by them before the learned single Judge in the Calcutta High Court. On appeal, the Division Bench of the High Court directed the Regional Transport Authority to consider grant of permits as though the 1980 Scheme is no longer in force. The Division Bench of the High Court appears to have taken the view that the Scheme formulated under the notification issued on 10.04.1980 by the Government of West Bengal was *ultra vires* the provisions of Chapter IV-A of the Motor Vehicles Act, 1939 and accordingly directed the Regional Transport Authority as above. On appeals, the Supreme Court reiterated the well settled position that a notified Scheme whether totally excluding private operators or partially excluding them is binding on all concerned as long it exists. It further held that the Scheme as framed in 1963 (by the State of West Bengal) does not totally exclude private operators and it permits operation of stage carriage by the private operators. The Scheme is thus a partial Scheme and as such it is not open to a private operator who is himself operating on a nationalized route on account of the modification of the Scheme, to seek a writ to the Authority not to grant permit to any other private operator on that route or a route overlapping the operation of the route. The Supreme Court made it clear that an existing private operator is not entitled to

enjoy monopoly of operation of the route and that it is for the competent authority to consider whether an application filed by a private operator for permit on that route, or another route overlapping that route should be issued or not.

Learned counsel for the petitioner seeks to rely on a sentence of the Judgment of Supreme Court (supra) to buttress his claim for a right to be heard in R.P. The sentence reads as under:

> "In case, the private operator who is operating on the nationalized route has a grievance that the number of private operators specified in the notified Scheme is being exceeded then the permit issued to the operator/operators in excess of the specified limit may be challenged before the statutory fora in accordance with the provisions of the Act."

In the next sentence after the quoted sentence, the Supreme Court held as under:

> "In any view of the matter, the Writ Petition seeking the relief quoted earlier is not maintainable, particularly when neither the private operators who are alleged to have got the permits in excess of the number specified in the notification nor the State undertaking have been impleaded as parties in the case. In such a case a prayer for a declaration in the form as sought in the Writ Petition could not be granted."

The signal emanating from a conjoint reading of both these sentences does not support the plea of the petitioner that he has a right to participate in the proceedings before the second respondent and to be heard in the revision preferred by the third respondent against the order of the second respondent declining grant of permit to her. In case, a permit is eventually granted to the third respondent, if the petitioner has a legal grievance, it is always open to him to pursue such remedies as are available to him at law.

For the aforesaid reasons and on the premises recorded above, in the considered view of this Court, an existing private operator is not entitled *ipso facto* to participate in proceedings before the second respondent in an application for grant of a pucca permit or in a revision petition filed by an aggrieved applicant against an adverse order of the second respondent.

On the aforesaid analysis, this Court finds no infirmity either in the application of law or exercise of discretion by the first respondent warranting any interference in this Writ Petition.

The Writ Petition is devoid of merits and is accordingly dismissed. No order as to costs.

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(GODA RAGHU RAM, J)

24th November 2004

Note: CC by one week

B/O

RRB

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Presiding Officer, The State Transport Appellate Tribunal, A.P., Hyderabad, Manoranjan Complex, Near Ajantha Gate, Mojamjahi Road, Hyderabad.

2. The Secretary, The State Transport Authority, A.P., Hyderabad, Sri Burgula Ramakrishna Rao Office Buildings, Tank Bund Road, Hyderabad.

3. The Managing Director, A.P.S.R.T.C., Musheerabad, Hyderabad.

4. Two CCs to G.P. for Transport, High Court Buildings, Hyderabad (OUT).

5. Two CD copies.